

DECISION AND FINDINGS

IN THE

CONSISTENCY APPEAL OF

EXXON COMPANY, U.S.A.

TO AN

OBJECTION FROM THE CALIFORNIA COASTAL COMMISSION

NOVEMBER 14, 1984

SYNOPSIS OF DECISION

Exxon Company, U.S.A. (Appellant) submitted an amended Exploration Plan to the Minerals Management Service of the Department of the Interior and to the California Coastal Commission (Commission) seeking permission to drill one exploratory well on Lease OCS P-0467 located approximately seven miles offshore Santa Barbara, California, and adjacent to three OCS tracts collectively known as the Santa Rosa Unit (SRU) and leased to the Appellant. The Appellant hopes to confirm through its exploratory drilling on Lease OCS P-0467 the existence of sufficient quantities of oil and gas to render development of its SRU reserves (estimated to be 35 million barrels of oil and 272 billion cubic feet of natural gas) economically feasible.

The Commission objected to the Appellant's proposed exploratory drilling on Lease OCS P-0467 on the ground that it would interfere with commercial fishing for thresher shark which occurs in the same area and would adversely affect coastal resources and commercial fishing facilities and activities in the coastal zone. The Commission proposed, as an alternative consistent with the California Coastal Management Program (CCMP), that the Appellant conduct its exploratory drilling outside the commercial fishing season for thresher shark during the period from Thanksgiving to May 1.

Under Subparagraphs A and B of Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended (CZMA) (16 U.S.C. § 1456(c)(3)(A) and (B)), and 15 CFR 930 of the Department of Commerce's implementing regulations, the Commission's objection to the Appellant's amended Exploration Plan precludes all Federal agencies from issuing any permit or license necessary for the exploratory drilling to proceed, unless the Secretary of Commerce finds that the objected-to activity may be Federally approved because it "is consistent with the objectives of the [CZMA]" (Ground I) or is "otherwise necessary in the interest of national security" (Ground II) (Section 307(c)(3)(B) of the CZMA). If the requirements of either Ground I or Ground II are met, the Secretary must sustain the appeal.

On March 9, 1984, pursuant to Subparagraphs A and B of Section 307(c)(3) of the CZMA and Subpart H of 15 CFR 930, the Appellant filed a Notice of Appeal with the Secretary of Commerce. The Secretary, upon consideration of the information submitted by the Appellant, the Commission, Federal agencies and interested persons as well as other information in the administrative record of the appeal, made the following findings required by 15 CFR 930.121 and 930.122:

Ground I

(a) The Appellant's exploratory drilling project on Lease OCS P-0467 would contribute to the national interest of attaining energy self-sufficiency and thereby furthers one

or more of the competing national objectives or purposes contained in Sections 302 and 303 of the CZMA. (pp. 5-6.)

(b) The project's contribution to the national interest outweighs its adverse effects on the resources and land and water uses of the coastal zone. (pp. 7-11.)

(c) The project will not violate any requirements of the Clean Air Act or Clean Water Act. (pp. 12-13.)

(d) There is a reasonable alternative available to the Appellant which would permit the project to be carried out without any adverse effects on the resources and land and water uses of the coastal zone, and in a manner consistent with the CCMP. (pp. 13-15.)

Ground II

The Appellant has not met the requirements of Ground II to demonstrate that its proposed exploratory drilling of one well on Lease OCS P-0467 directly supports national defense or security interests in such a manner that these interests will be significantly impaired if the drilling cannot go forward as proposed. (pp. 15-17.)

Because the Secretary has found that the Appellant has not satisfied the requirements of the two grounds set forth in the CZMA for allowing its exploratory drilling project to proceed notwithstanding the objection by the Commission, the Appellant's project, as proposed, may not be permitted by Federal agencies. (pp. 15, 18.)

Factual Background

Appellant's Exploration Plan

Outer Continental Shelf (OCS) Lease P-0467 offshore Southern California was acquired by the Sun Exploration and Production Company and Koch Exploration Company (lessees) on June 11, 1982. On February 4, 1983, Exxon Company, U.S.A. (Appellant), as the lessees' designated operator of the southwest one-quarter of Lease OCS P-0467, submitted its original Exploration Plan (Plan) and Environmental Report to the Minerals Management Service (MMS) of the Department of the Interior (Interior), seeking approval to drill up to three exploratory wells (wells A, B and C) on Lease OCS P-0467. Administrative Record, Appellant's Supporting Statement 2, 9 [all references hereinafter are to the Administrative Record]. Lease OCS P-0467 lies approximately seven miles south-southwest of Santa Barbara, California, and is adjacent to three OCS lease tracts (Leases OCS P-0231, 0231 and 0238) "unitized" under the Outer Continental Shelf Lands Act (OCSLA) to form the Santa Rosa Unit (SRU), of which the Appellant is the sole lessee and operator. *Id.* at 2-3. See Figure I. Lease OCS P-0467 also is situated within the fishing area identified by the California Department of Fish and Game (DFG) as Fish Block 667, the location of a thresher shark fishery important to local fishermen. California Coastal Commission's Response 12 (May 8, 1984). See Figure II. The Appellant's major goal in conducting exploratory drilling on Lease OCS P-0467 is to confirm the existence of sufficient quantities of oil and gas to render development and production of the adjacent SRU economically feasible. Appellant's Supporting Statement 3. The Appellant estimates that the SRU reserves may be as much as 35 million barrels of oil and 272 billion cubic feet of natural gas. *Id.* at 52.

On February 14, 1983, MMS submitted the Appellant's Plan, Environmental Report and certification that the activities described in the Plan comply and would be conducted in a manner consistent with the California Coastal Management Plan (CCMP) to the California Coastal Commission (Commission) for review under Section 307(c)(3)(B) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. § 1456(c)(3)(B). *Id.* at 2. On July 26, 1983, the Commission, as the Federally-approved coastal zone management agency for the State of California under Sections 306 and 307 of the CZMA and 15 CFR Parts 923 and 930 of the implementing regulations of the Department of Commerce (Commerce), objected to the Appellant's consistency certification for the activities described in the Appellant's Plan for Lease OCS P-0467. *Id.* at 13. The Commission based its objection on its determination that the Appellant's exploratory drilling operations failed to meet the enforceable policy requirements of the California Coastal Act (Section 30000 et seq. of the California Public Resources Code) [hereinafter CCA] relating to

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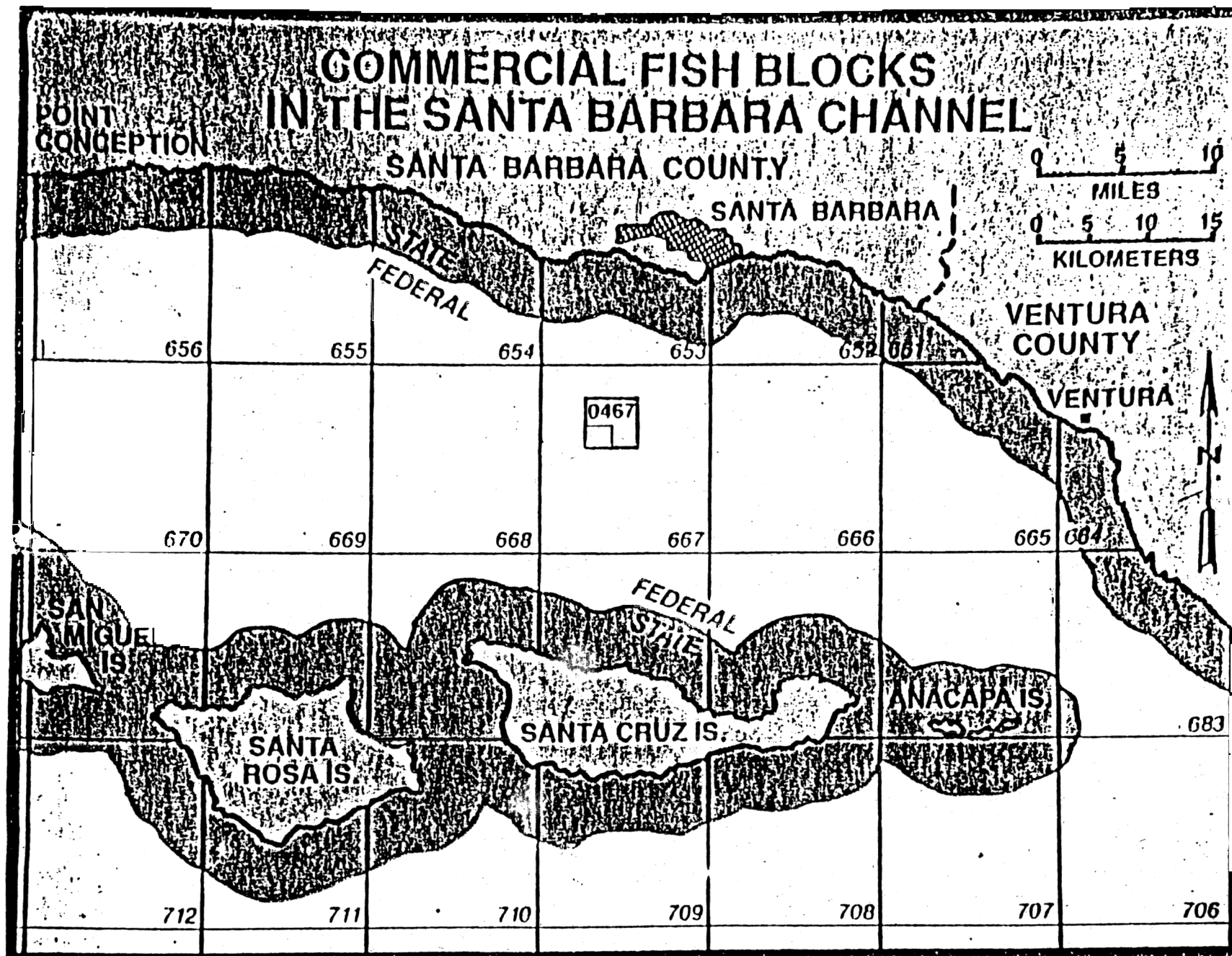
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FIGURE II



the protection of marine resources and commercial fishing facilities and activities in the coastal zone. Commission's Findings 2-11 (Aug. 16, 1983) [hereinafter Commission's August 16, 1983 Findings]. Specifically, the Commission found that the Appellant's proposed exploratory drilling of three wells on Lease OCS P-0467 would conflict with the activities of fishermen engaged in the commercial thresher shark fishery if the exploratory drilling occurred during the fishing season for this species from May through December. Id. at 6-9.

The Appellant appealed the Commission's objection to the Secretary of Commerce (Secretary) on August 26, 1983. Subsequent to the filing of the appeal, the Appellant and the staff of the Commission discussed the issues raised by the appeal in a November, 1983 meeting conducted by the Office of Ocean and Coastal Resource Management (OCRM) of the National Oceanic and Atmospheric Administration (NOAA). Appellant's Supporting Statement 17. As a result of this discussion, the Appellant and the staff of the Commission agreed to the following:

- (a) Exxon will submit an amended POE [Plan of Exploration to the Minerals Management Service for all three wells . . .
- (b) CCC staff will recommend to the CCC, at its December 15, 1983 meeting, that it approve the portion of the amended POE relating to the first of the three wells (well "A" as shown on the appeal documents);
- (c) Exxon will suspend action on its pending lawsuit arising from the CCC's objection to its previous POE, and Exxon will withdraw its appeal to the Secretary of Commerce;
- (d) Exxon will withdraw the pending lawsuit [challenging the Commission's consistency decision] entirely if well "A" drilling is approved by the CCC at its December 15, 1983 meeting, and will so advise the CCC in writing in advance of the December 15 meeting; and
- (e) CCC staff will recommend that CCC act on the remaining portions of the amended POE, regarding drilling of wells designated "B" and "C", at or before the CCC meeting scheduled for February 7-10, 1984.

Commission's Response at Exhibit 4 (May 8, 1984), Letter from Director, OCRM, to Executive Director, Commission (Dec. 2, 1983).

On December 15, 1983, the Commission concurred in the Appellant's consistency certification for the drilling of well A on Lease OCS P-0467 before the beginning of the thresher shark fishing season on May 1, 1984. Commission's Findings 2 (Dec. 15, 1983). The following mitigation measures also were agreed to by the Appellant:

1. removal of anchor buoys to reduce the area in conflict with the [fishermen];
2. minimization of support boat traffic during night-time fishing operations;
3. routing of support boat traffic to minimize interference with fishing operations;
4. coordinating operations with other operators for a maximum of two widely-spaced rigs in the area at any one time; [and]
5. notification of fishing interests of the well spud date, and the location of the rig, anchors, and anchor lines.

Id. at 2-3.

The Appellant's appeal of the Commission's July 27, 1983 objection was dismissed by the Secretary on December 14, 1983, at the request of the Appellant (49 Fed. Reg. 2004 (1984)).

On February 8, 1984, the Commission objected for the second time to the Appellant's consistency certification of its proposal to drill wells B and C on Lease OCS P-0467 as described in its amended Plan. Commission's Findings 2 (Feb. 8, 1984) [hereinafter Commission's February 8, 1984 Findings]. The Commission based its objection on the same grounds stated in its August 16, 1983 Findings (supra, p. 2).

Under Subparagraphs A and B of Section 307(c)(3) of the CZMA and 15 CFR 930.131, the Commission's consistency objection precludes all Federal agencies from issuing any permit or license necessary for the Appellant's proposed activity as described in its amended Plan to proceed, unless the Secretary determines that the activity is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security.

Appeal to the Secretary of Commerce

On March 9, 1984, the Appellant filed with the Secretary a Notice of Appeal together with supporting information requesting that the Secretary find that the activities described in the Appellant's amended Plan are consistent with the objectives or purposes of the CZMA or are otherwise necessary in the interest of national security. The Secretary has reserved the authority to decide such appeals. Department Organization Order 25-5A, Section 3.01(w).

Commerce published a public notice of the appeal in the Federal Register (49 Fed. Reg. 11699 (1984)) and in a local newspaper

in Santa Barbara, California. Following the Appellant's original appeal in this matter on August 26, 1983, a public hearing was held in Santa Barbara, California on November 8, 1983. Comments on whether, how and to what extent the activities proposed in Appellant's amended Plan would contribute to the national interest including the national security interest were requested and received from the Departments of Defense, State, the Interior, Treasury, Labor, Transportation, Energy, and the Federal Energy Regulatory Commission. Additional comments and information have been received from the Appellant, the Commission (including the record of Appellant's proceedings before it), the Environmental Protection Agency and the Department of the Interior. All comments and information received by Commerce during the course of this appeal and the original appeal in this matter filed by the Appellant on August 26, 1983, have been included in the Administrative Record.

I find that this appeal is properly under consideration and that the parties - the Appellant and the Commission - have complied with Commerce's regulations governing the conduct of this appeal (Subparts E and H of 15 CFR Part 930).

Grounds for Sustaining an Appeal

Subparagraphs A and B of Section 307(c)(3) of the CZMA provide that Federal licenses or permits for activities described in an OCS exploration or development plan may not be granted until either the State concurs in the consistency of such activities with its Federally-approved coastal zone management program (its concurrence may be conclusively presumed in certain circumstances), or I find, "after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state," that each activity described in detail in such plan is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. Appellant has pleaded both grounds. Appellant's Supporting Statement xii-xxi.

The regulations interpreting these two statutory grounds for allowing Federal approval despite a State's consistency objection are found at 15 CFR 930.121 ("consistent with the objectives or purposes of the act") and 930.122 ("necessary in the interest of national security") and are set forth in full below:

The term "consistent with the objectives or purposes of the [CZM] Act" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because it satisfies the following four requirements:

- (a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 and 303 of the Act,

(b) When performed separately or when its cumulative effects are considered it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,

(c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and

(d) There is no reasonable alternative available (e.g., location[,], design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.

15 CFR 930.121.

The term "necessary in the interest of national security" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

15 CFR 930.122.

The regulations governing my consideration of an appeal provide:

[T]he Secretary shall find that a proposed Federal license or permit activity . . . is consistent with the objectives or purposes of the [CZMA], or is necessary in the interest of national security, when the information submitted supports this conclusion.

15 CFR 930.130.

Ground I: Consistent with Objectives of the CZMA

The first statutory ground (Ground I) for sustaining an appeal is to find that the activity "is consistent with the objectives of [the CZMA]." To make this finding, I must determine that the activity satisfies all four of the elements specified in 15 CFR 930.121.

First Element

To satisfy the first of the four elements, I must find that:

The activity furthers one or more of the competing national objectives or purposes contained in Sections 302 or 303 or the [CZMA].

15 CFR 930.121(a)

Sections 302 and 303 of the CZMA identify a number of objectives and purposes which may be generally stated as follows:

1. To preserve, protect and where possible to restore or enhance the resources of the coastal zone (Section 302(a), (b), (c), (d), (e), (f), (g), and (i); and Section 303(1));
2. To develop the resources of the coastal zone (Section 302(a), (b) and (i); and Section 303(1)); and
3. To encourage and assist the States to exercise their full authority over the lands and waters in the coastal zone, giving consideration to the need to protect as well as to develop coastal resources, in recognition by the Congress that State action is the "key" to more effective protection and use of the resources of the coastal zone (Section 302(h) and (i); and Section 303(2)).

As I have stated in an earlier appeal, OCS exploration, development and production activities are included within the objectives and purposes of the CZMA. Further, because Congress has broadly defined the national interest in coastal zone management to include both protection and development of coastal resources, this element will "normally" be found to be satisfied on appeal. Decision of the Secretary of Commerce in the Matter of the Appeal by Exxon Company, U.S.A., to a Consistency Objection by the California Coastal Commission (Feb. 18, 1984); 49 Fed. Reg. 8274 (March 6, 1984) [hereinafter Exxon February 18, 1984 Decision].

Appellant's amended Plan involves the search for oil and gas from an area offshore California. As stated above, the exploration, development and production of offshore oil and gas resources and a consideration of the effects of such activities on the resources and land or water uses of the coastal zone are among the objectives of the CZMA when such activities require Federal permits. Because the record shows that Appellant's amended Plan falls within and furthers one or more of the broad objectives of Sections 302 and 303 of the CZMA, I find that the Appellant's project satisfies the first element of Ground I.

Second Element

To satisfy the second element of Ground I, I must find that:

When performed separately or when its cumulative effects are considered, the activity will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest.

15 CFR 930.121(b).

This element requires that I weigh the adverse effects of the objected-to activity against its contribution to the national interest. The Commission argues that the effects considered under this element of Ground I include the effects of the Appellant's proposed exploratory drilling on the resources and land and water uses of the coastal zone. Commission's Response 5-11 (May 8, 1984). The Appellant maintains that this element comprises only the effects of its proposed activity on the "natural resources" of the coastal zone. Appellant's Supporting Statement 30-32. In order to determine the scope of what should be considered in my weighing, I have examined Section 307(c)(3) of the CZMA, from which the second element of Ground I derives. Section 307(c)(3)(B) of the CZMA states, in pertinent part:

After the management program of any coastal state has been approved by the Secretary under Section 306, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the ~~Outer~~ Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program (emphasis added).

Subsections (10) and (18) of Section 304 of the CZMA define the terms "land use" and "water use" broadly as follows:

The term "land use" means activities which are conducted in, or on the shorelands within, the coastal zone

The term "water use" means activities which are conducted in or on the water

Therefore, in order to accord full effect to the statutory provisions quoted above, I will consider the adverse effects of the activity on coastal resources and land and water uses, as defined by the CZMA, in performing the weighing required by this element.

Adverse Effects

The Commission's objection to the Appellant's proposed exploratory drilling on Lease OCS P-0467 is based primarily on the effects of such drilling on commercial fishing facilities located in the coastal zone. Commission's February 8, 1984 Findings 2-4; Commission's Response at Exhibit 6 (May 8, 1984), Letter from Deputy Director, Commission, to Manager, Exploration Department, Exxon Company, U.S.C. (Feb. 16, 1984). The Commission has identified such facilities as hoists, ice machine and diesel operations, processing plants, pier uses, and haul-out facilities as commercial fishing facilities that may be affected due to Appellant's activities. Commission's Response 6 (May 8, 1984). The Commission argues that, because the Appellant's proposed exploratory drilling on Lease OCS P-0467 will interfere with the commercial thresher shark fishery located in Fish Block 667, commercial fishing facilities in the coastal zone will necessarily be adversely affected and, therefore, such facilities will not be protected in compliance with Section 30234 of the CCA, requiring that "[f]acilities serving the commercial fishing and recreational boating industry shall be protected, and where feasible, upgraded." *Id.* at 5-8. The Commission also argues that the proposed exploratory drilling, considered in the context of other OCS exploratory and development activities occurring in the vicinity of the Appellant's project, will cumulatively and adversely affect such coastal land and water uses. *Id.* at 18-22.

The Appellant maintains that the effects of its proposed exploratory drilling on the thresher shark fishery are "commercial" and "economic" in nature and that such drilling does not affect "land or water uses" of the coastal zone. Appellant argues that protection of OCS commercial fishing activities from space conflicts with other OCS activities is not a proper use of consistency because it does not affect a land use or water use in the coastal zone but only has a "perceived economic impact." Appellant's Supporting Statement 130. Appellant states that the sole responsibility for resolving OCS oil and gas and fishing conflicts rests with the Secretary of the Interior. *Id.* at 131.

The Commission maintains that the Appellant's proposed exploratory drilling activities on Lease OCS P-0467 would disrupt fishing for thresher shark in an area of Fish Block 667 which the Commission describes as a valuable fishing ground for this species. The Commission states, quoting a local fisherman, that the Appellant's drilling operations:

lie directly in the #1 and #2 shark drift net fishing area in the Santa Barbara Channel. This area is called "the finger", as denoted by the shape of the 100 fathom curve on navigational charts.

Commission's Response 12 (May 8, 1984).

The Commission has provided fishing data prepared by the DFG indicating that Fish Block 667 ranked in the top 10 percent of the 352 fish blocks reporting thresher shark catches for the period 1981-1983. In 1982, according to the Commission, Fish Block 667 recorded the third highest catch of thresher shark among these fish blocks. Id. at 12-14.

Testimony by local fishermen in the public hearing held in Santa Barbara, California, on November 8, 1983, indicates that the thresher shark fishery found in "the finger" area of Fish Block 667 is an important and valuable fishing ground, because of the phenomenon of upwelling currents which occurs there, attracting anchovies upon which the thresher shark feeds. These fishermen estimate the thresher shark catch from this area to contribute between 10 to 30 percent of the gross income of members of the Pacific California Federation of Fishermen's Association. Transcript of November 8, 1983 Hearing 66, 141-144. Other estimates of the percentage of gross income attributable to Fish Block 667 by local fishermen testifying at the hearing are 20 to 30 percent (Id. at 71) and 25 to 40 percent (Id. at 110).

The Appellant has provided thresher shark catch statistics for Fish Block 667 for the period 1981-1983, and although the parties agree on the number of sharks reported to be caught during this period, they disagree about the significance of the statistics. The Appellant states that in 1982 thresher sharks reported caught on Fish Block 667 represented 4.4 percent of the total Southern California catch, and were worth approximately \$100,000. Smaller percentages and values are indicated for 1981 and 1983. Appellant's Supporting Statement 104. According to testimony at the public hearing by an expert consultant to the Appellant, the system of reporting catch statistics by species and fish blocks was initiated by the DFG in 1981. Thresher shark statistics have varied considerably during the past three years, but the fishery is expanding rapidly and may be moving to the north. The consultant notes that the thresher shark fishery in the Santa Barbara Channel may be of relatively less significance when compared to other fishing areas north of Point Conception, California. The consultant concludes that the Appellant's proposed exploration drilling cannot seriously affect the California commercial fishing industry because the thresher shark fishery itself accounts for a relatively small percentage of the total economic value of the entire State's commercial fishery. Transcript of November 8, 1983 Hearing 19-20.

The information provided by the Commission indicates that although the thresher shark fishery found in "the finger" area of Fish

Block 667 is important to local fishermen and accounts for a significant part of their gross income, the thresher shark fishery is a relatively small part of the State's commercial fishery. The record indicates that Appellant's proposed drilling will interfere with the thresher shark fishery on Fish Block 667. However, the economic consequences to the State's commercial fishery of a lower catch of thresher shark caused by this interference cannot be considered substantial, although the economic effects on local fishermen may be serious. Although the Commission has identified certain commercial fishing facilities and activities in the coastal zone associated with this fishery that may be adversely affected by the Appellant's exploratory drilling on Fish Block 667, the record does not indicate in what manner and to what degree such effects on land and water uses in the coastal zone will be felt. Such effects, including cumulative effects, will be limited by the relatively small economic value of the thresher shark fishery on Fish Block 667 and, therefore, I find that these effects are not substantial.

The Commission found that the air and water quality effects of Appellant's proposed exploratory drilling are mitigated to the maximum extent feasible, and to this extent that the proposed drilling is consistent with the CCMP. The Commission made no further findings regarding the effects of the Appellant's proposed drilling on the resources and land and water uses of the coastal zone. Commission's February 8, 1984 Findings 4.

Contribution to the National Interest

Commerce regulations indicate that there are several ways to determine the national interest in a proposed project, including seeking the views of Federal agencies, examining Federal laws and policy statements from the President and Federal agencies, and reviewing plans, reports and studies issued by Federal agencies. 15 CFR Part 923, 44 Fed. Reg. 18608 (1979). Commerce sought the views of certain Federal agencies concerning the national interest in the Appellant's proposed exploratory drilling on Lease OCS P-0467. The views expressed by Federal agencies regarding the national interest in this project are summarized below:

The Department of Treasury commented that "although the benefits of an individual project are difficult to quantify, the effects even if small are favorable." The Department believes that the Appellant's exploratory activities could be economically beneficial because the purpose is to delineate the reservoir characteristics of a known deposit. Letter from Manuel H. Johnson, Assistant Secretary for Economic Policy, to John V. Byrne, Administrator, NOAA (April 27, 1984).

The Department of the Interior stated that the proposed exploration project would contribute substantially to the national interest by furthering the goal of attaining energy self-sufficiency. Letter from Garrey E. Carruthers, Assistant Secretary for Land and

Minerals Management, to John V. Byrne, Administrator, NOAA (June 6, 1984).

The Department of Labor commented that while the overall employment effects of more and cheaper oil are desirable, the Appellant's exploratory activity primarily will provide information about the quantity of oil available and provide information to assess trade-offs between economic and environmental impacts. Letter from Daniel K. Benjamin, Acting Assistant Secretary for Policy, to John V. Byrne, Administrator, NOAA (May 31, 1984).

The Department of Transportation commented that there would be no conflict between the Appellant's proposed exploration site and the national interest in navigational safety and that development of the SRU would contribute to the national interest by creating employment opportunities, improving the U.S. balance of trade and by increasing Federal, State and local tax revenues. Letter from Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, to John V. Byrne, Administrator, NOAA (May 23, 1984).

The Federal Energy Regulatory Commission commented that "prudent management of the already identified Santa Rosa resources, as well as other non-replenishable domestic energy resources contribute in a very direct sense to the overall national interest." The Commission noted that although the United States is currently experiencing a surplus of certain forms of energy, further exploration and development of domestic oil and gas resources is consistent with the long-term national interest, and that development of the SRU would be consistent with national energy considerations. Letter from Kenneth A. Williams, Director, Office of Pipeline and Producer Regulation, to John V. Byrne, Administrator, NOAA (May 17, 1984).

The Appellant maintains that its exploratory drilling on Lease OCS P-0467 serves the national interest expressed in the CZMA and the OCSLA in attaining energy self-sufficiency. Appellant's Supporting Statement 45-52. The Appellant states that the primary purpose of its exploratory drilling operations on Lease OCS P-0467 is to confirm the existence of oil and gas reserves in sufficient quantity to justify commercial development of the adjacent SRU. The Appellant estimates that such SRU reserves may be as much as 35 million barrels of oil and 272 billion cubic feet of natural gas. Id. at 54-57.

Based on the information in the record, I find that Appellant's exploratory drilling on Lease OCS P-0467 will contribute to the national interest in attaining energy self-sufficiency. Although I cannot determine exactly the value of this contribution to the national interest, I find that it is sufficient to outweigh the relatively insubstantial adverse effects that will be caused by the Appellant's proposed drilling on the resources and land and water uses of the coastal zone.

Third Element

To satisfy the third element of Ground I, I must find that:

The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.

15 CFR 930.121(c).

The requirements of the Clean Air Act and the Federal Water Pollution Control Act are incorporated in all State coastal programs approved under the CZMA. Section 307(f) of the CZMA.

The Clean Water Act

The Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., as amended (the Clean Water Act), provides that the discharge of pollutants is unlawful except in accordance with a National Pollution Discharge Elimination System (NPDES) permit issued by the Administrator of the Environmental Protection Agency (EPA). Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342.

The general NPDES permit covering discharges from oil and gas facilities operating on OCS P-0467, including the disposal of drill muds and cuttings, expired on June 30, 1984. EPA is developing a new general NPDES permit incorporating effluent limitations reflecting the Best Available Technology Economically Achievable which, according to EPA, should be at least as stringent as the earlier permit. EPA commented that the Commission does not claim violations of the Clean Water Act as grounds for its consistency objection and declined further comment on this issue. Letter from Josephine S. Cooper, Assistant Administrator for External Affairs, EPA, to John V. Byrne, Administrator, NOAA (June 5, 1984). EPA has stated, in the context of another appeal, that oil and gas exploratory operations on the OCS must comply with the Clean Water Act, provided that the terms and conditions of the new general NPDES permit are met. Letter from William D. Ruckelshaus, Administrator, EPA, to John V. Byrne, Administrator, NOAA (April 24, 1984).

The Commission has found that Appellant's agreement to dispose of drill muds and cuttings as required by the Commission represents the maximum feasible mitigation under State law, and, therefore, with regard to the disposal of drill muds and cuttings, that the proposed project is consistent with section 30260 of the CCA. Commission's February 8, 1984 Findings 4.

Because the Appellant cannot conduct its proposed exploratory drilling without meeting the terms and conditions of the new NPDES permit, I find that the Appellant's proposed activity will not violate the requirements of the Clean Water Act.

The Clean Air Act

The Clean Air Act, 42 U.S.C. §7401 et seq., directs the Administrator of EPA to prescribe national ambient air quality standards for air pollutants to protect the public health and welfare. EPA noted that the Commission does not claim violations of the Clean Air Act as a basis for its consistency objection and declined further comment. Letter from Josephine S. Cooper to John V. Byrne, supra. Interior commented that Appellant's project will be conducted in compliance with the Clean Air Act. Letter from Garrey E. Carruthers, Assistant Secretary for Land and Minerals Management, Interior, to John V. Byrne, Administrator, NOAA (May 30, 1984). The Commission found that Appellant's project mitigates air quality impacts to the maximum extent feasible, and, therefore, is consistent with Section 30260 of the CCA. Commission's February 8, 1984 Findings 4.

Because the Appellant cannot conduct its proposed exploratory drilling without meeting all relevant standards of the Clean Air Act, I find that the Appellant's proposed activity will not violate any requirement of the Clean Air Act.

Fourth Element

- To satisfy the fourth element of Ground I, I must find that:

There is no reasonable alternative available (e.g., location[, design, etc.) which would permit the activity to be conducted in a manner consistent with the [State coastal zone] management program.

15 CFR 930.121(d).

The Commission has found that the Appellant's proposed drilling of two exploratory wells on Lease OCS P-0467 within Fish Block 667 is inconsistent with the CCMP because such exploratory drilling will conflict with commercial fishing for thresher shark during the seven-month fishing season for this species from May to November, which, in turn, will adversely affect coastal zone fishing support facilities. The Commission has proposed that the Appellant can comply with the enforceable coastal management policies of the CCMP by limiting its exploratory drilling outside the thresher shark fishing season to the five months from Thanksgiving to May 1. Commission's February 8, 1984 Findings 2-3.

The Appellant opposes the alternative of conducting its drilling operations on Lease OCS P-0467 when such operations will not conflict with the thresher shark fishery because it argues that there are no impacts from its drilling operations on any land or water use in the coastal zone and that the CCMP contains no enforceable policies which address conflicts between OCS oil and gas activities and commercial fishing operations. Appellant's Supporting Statement 126-127. The Appellant also argues that

the alternative of conducting its exploratory drilling outside the thresher shark fishing season is unreasonable because, among other reasons, the effects of the proposed exploration activities on commercial fishing operations are negligible, and the alternative is inconsistent with multiple-use concepts. Id.

The Appellant does not argue that the alternative offered by the Commission is "unavailable." Based on the information in the record, I find that the proposed alternative is available; however, to satisfy the fourth element of Ground I, I must determine that the alternative is also "reasonable."

I have stated in an earlier appeal that an alternative to an objected-to activity or project may require major changes in the "location" or "design" of the project, and that whether an alternative will be considered "reasonable" depends upon its feasibility and upon balancing the estimated increased costs of the alternative against its advantages. Exxon February 18, 1984 Decision. Balancing the costs of the alternative against its advantages requires in this case that I consider, first, how much less adverse effects on the land and water uses of the coastal zone would occur under the alternative, and second, the increased costs to the Appellant of carrying out the exploratory drilling in a manner that is consistent with the CCMP.

I have already found that the effects of the Appellant's exploratory drilling on the land or water uses of the coastal zone as a result of the interference in the thresher shark fishery on Fish Block 667 to be limited by the small economic value of this fishery relative to the value of the State's commercial fishery (supra, pp. 9-10). Therefore, the "advantage" of avoiding any interference in this fishery will be similarly limited, although the record indicates that such an "advantage" to local fishermen fishing for thresher shark on Fish Block 667 may be considerably greater (supra, p. 9).

The Appellant asserts that the alternative of drilling its exploratory well outside the fishing season for the thresher shark imposes costs as a result of modifications the Appellant must make in its drilling programs. Appellant's Supporting Statement 151. However, the record in this appeal does not indicate the magnitude of such costs, and does not provide an explanation, in the circumstances of this appeal, why exploratory drilling operations on Lease OCS P-0467 conducted outside the thresher shark fishing season, as proposed by the Commission, would involve greater costs than such operations conducted during the fishing season for this species, as proposed by the Appellant.

The record indicates that the Appellant has already drilled one exploratory well on Lease OCS P-0467 during January and February, 1984, thereby accommodating both its interest in Lease OCS P-0467 and the interest of the thresher shark fishermen in Fish

Block 667. Id. at 18-19. The current thresher shark fishing season will soon end, making available to the Appellant an opportunity during a period of five months ^{1/} to carry out its exploratory operations on Lease OCS P-0467 without any degree of interference with the relatively new and developing commercial thresher shark fishery, without any adverse effects on the land or water uses of the coastal zone and, for that reason, fully consistent with the policies of the CCMP. The costs to the Appellant of conducting exploratory operations on Lease OCS P-0467 outside the thresher shark fishing season have not been shown to be any greater than the costs of such operations conducted during the fishing season. Other oil companies, including Sun Oil, Chevron, Getty and Arco, have agreed to accommodate the fishing industry through limitations on their drilling activities (transcript of November 8, 1983 Hearing 36-37), which suggests to me that such restriction is not an unreasonable standard in the oil industry. Balancing the costs of the alternative proposed by the Commission against its advantages, I find that the alternative is reasonable. Because I have found that there is a reasonable alternative available to the Appellant which would permit it to conduct its exploratory drilling on Lease OCS P-0467 in a manner consistent with the CCMP, I find that the Appellant has not met the fourth element of Ground I. 2/

Conclusion for Ground I

On the basis of the findings I have made above, I find in conclusion that the Appellant has not satisfied all of the elements of Ground I, and, therefore, that the Appellant's exploratory drilling as proposed in its amended Plan is not consistent with the objectives of the CZMA.

Ground II: National Security

The second statutory ground (Ground II) for sustaining an appeal requires that I find that the activity is "necessary in the interest of national security." To make this finding, I must determine that "a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed," and I must seek and accord considerable weight to the views of the Department of

^{1/} According to Appellant, the drilling, testing and abandonment of Well B will require less than four months. Appellant's Supporting Statement 62.

^{2/} Appellant argues that such restriction during production operations is not workable, but I need not address this problem in order to reach my finding with respect to Appellant's exploratory drilling.

Defense and other Federal agencies in determining the national security interests involved in a project, although I am not bound by such views. 15 CFR 930.122.

The Appellant states that its project will further the national security interest by increasing domestic production of oil and gas, thereby reducing dependence on foreign energy sources. Appellant's Supporting Statement 52-53. Appellant estimates the SRU reserves at 35 million barrels of oil and 272 billion cubic feet of natural gas. Id. at 52. The Commission argues that the Appellant has not provided any evidence demonstrating that the failure to carry out exploratory drilling on Lease OCS P-0467 during the thresher shark fishing season will "significantly impair" the national defense or other national security interest or that the proposed project "directly supports" a national defense or security interest. Commission's Response 29-32 (May 8, 1984).

The views of the Departments of Defense, Energy, the Interior, State, Transportation and Treasury were sought concerning the national security interest served by the Appellant's proposed exploration operations on Lease OCS P-0467, and are summarized below:

The Department of Defense commented that the Appellant's exploration activities would have no adverse effect on Defense Department activities and that potential future production of petroleum resources would provide domestic energy essential to Army, Navy and Air Force activities. Letter from Jerry L. Calhoun, Principal Deputy Assistant Secretary of Defense, to John V. Byrne, Administrator, NOAA (June 12, 1984).

The Department of Energy stated that exploration for, and production of, oil and gas from the OCS plays an important role in supporting national defense and security and that continued increased oil importation would have national security and defense implications. The Department noted that the exploration of Lease OCS P-0467 is in the interest of national security and defense. Letter from William P. Vaughan, Assistant Secretary, Fossil Energy, to John V. Byrne, Administrator, NOAA (May 25, 1984).

The Department of the Interior commented that approval of the Appellant's exploration plan is necessary to develop reserves to support and improve national security and that potential SRU production would be secure from interruption. Letter from Garry E. Carruthers, Assistant Secretary for Land and Minerals Management, to John V. Byrne, Administrator, NOAA (June 6, 1984).

The Department of State commented that "most new discoveries of oil in the U.S. are in relatively small fields and that a large number of new fields such as the Exxon tract will be needed to maintain U.S. energy production levels." The Department

noted that the Appellant's exploration activities could lead to domestic oil production that would contribute to national security. Letter from E. Allan Wendt, Deputy Secretary, International Energy and Resources Policy, to John V. Byrne, Administrator, NOAA (May 31, 1984).

The Department of Transportation stated that increased domestic production would enhance national security by reducing dependence on foreign oil and that the Appellant's exploration activities would support national security interests. Letter from Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, to John V. Byrne, Administrator, NOAA (May 23, 1984).

The Department of the Treasury commented that exploration and subsequent development of domestic energy sources serves the national security interest by reducing dependence on foreign energy. Letter from Manuel H. Johnson, Assistant Secretary, Economic Policy, to John V. Byrne, Administrator, NOAA (April 27, 1984).

I have found in an earlier appeal that the development of proven oil and gas reserves in the Santa Ynez Unit (SYU) of 300-400 million barrels of oil and 600-700 billion standard cubic feet of gas is necessary in the interest of national security. Exxon February 18, 1984 Decision. The issue here is whether exploratory drilling to delineate a field estimated to contain considerably less oil and gas reserves (35 million barrels of oil and 272 billion standard cubic feet of gas) than the SYU directly supports national defense or security objectives, and whether such interests will be significantly impaired if the drilling cannot go forward as proposed.

Conclusion for Ground II

Because the oil and gas reserves to be delineated by the Appellant's proposed exploratory drilling may only contain a maximum of 35 million barrels of oil and 272 billion cubic feet of gas, because neither the Appellant nor the Department of Defense identified any significant impairment to national defense or security interests that would occur if the Appellant could not conduct its exploratory drilling as proposed, and because Appellant's exploratory drilling project may be conducted during the period from Thanksgiving to May 1, thereby fulfilling any national security interests in a manner consistent with the CCMP, I find that the requirements of Ground II for sustaining an appeal have not been met. This outcome conforms to my duty to seek "to reconcile national security needs and the State [coastal] management program in the case of conflicts." S. Rept. No. 92-753, 92d Cong., 2d Sess. (1972), reprinted in Congressional Research Service, Library of Congress, 94th Cong., 2d Sess., Legislative History of the Coastal Zone Management Act of 1972, as amended in 1974 and 1976, at 211 (Comm. Print 1976).

Conclusion

Because I have found that the Appellant has not satisfied the requirements of the two grounds set forth in the CZMA for allowing its exploratory drilling project to proceed notwithstanding the objection by the Commission, the Appellant's project, as proposed, may not be permitted by Federal agencies. 15 CFR 930.131(b).

Markoohn Baldridge
Secretary of Commerce